

**VS.**

JOSEPH SMITH F/K/A EMMANUEL E.  
ARAKPOGUN  
TX-1328630-L

www.ck12.org

DOCKETED COMPLAINT NO.  
06-104, 06-106, 06-172, 07-088 &  
07-189

## CONSENT ORDER

On this the 17<sup>th</sup> day of October, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license of Joseph Smith f/k/a Emmanuel E. Arakpogun (Respondent).

In order to conclude this matter, Joseph Smith f/k/a Emmanuel E. Arakpogun neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The existence of a violation is in dispute. Pursuant to TEX GOVT CODE ANN. § 2001.056, Respondent does not admit to any violation of any statute or rule of the Board, but agrees to the entry of this Consent Order solely for the purposes of resolving this matter, and not to be used for any other purpose.

The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

## FINDINGS OF FACT

1. Respondent Joseph Smith f/k/a Emmanuel E. Arakpogun is a Texas state licensed real estate appraiser, holds license number TX-1328630-L, and has been licensed by the Board during all times material to the above-noted complaint cases.
2. Petitioner has received four different complaints against Respondent. The complaints relate to real property appraisal services performed by Respondent on properties located at: 7702 and 7711 Dane Hill Drive, Spring, Texas 77389 ("the Dane Hill properties"), 5605 Tallow Lane, Houston, Texas 77021 ("the Tallow property"), 16426 De Lozier Street, Houston, Texas 77091 ("the De Lozier property") and 7731 Malac Road, Spring, Texas 77389 ("the Malac property").
3. The complaints all involve allegations that Respondent has produced appraisal reports that were inflated, misrepresentative, not performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") or had other deficiencies in violation of applicable law.

4. Respondent was notified of all the complaints and his response to each of these complaints has been received.
5. Enforcement Staff for the Board has alleged that Respondent has violated TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to comply with USPAP in effect at the time of his appraisal or appraisal practice for the properties noted above. Specifically, Respondent's USPAP violations with respect to the Dane Hill properties include:
  - a) Respondent violated the record keeping provisions of the Ethics Rule because his work file did not include documentation necessary to support his opinions, analyses and conclusions;
  - b) USPAP Standards 1-2(f) & 2-2(b)(vii) – Respondent failed to discuss his scope of work for the Dane Hill appraisals;
  - c) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvement(s) description adequately because he failed to provide any living area calculations in his report or in his work file;
  - d) USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of site value;
  - e) USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements for the Dane Hill properties because he inflated the cost per square foot to a figure higher than the figure derived from industry recognized cost manuals and other information sources;
  - f) USPAP Standards 1-1(a) & 1-4(b) – Respondent failed to employ recognized methods and techniques in his cost approach analysis correctly;
  - g) USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent did not collect, verify, analyze and reconcile comparable sales data adequately. He used inappropriate, unverified comparable sales even though more appropriate, more similar sales were readily available in the area and should have been used, he failed to support his adjustments for lot size, design / appeal and quality of construction and did not report and adjust for seller concessions and closing costs contributions. Respondent also used incorrect square footage for the comparables he did use;
  - h) USPAP Standards 1-1(a) & 1-4(a) – Respondent has failed to employ recognized methods and techniques correctly in his sales comparison approach for the reasons detailed above;
  - i) USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze and report the agreement of sale for the Dane Hill properties, nor was it contained

in his work file; and,

- j) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – Respondent produced misleading appraisal reports for the Dane Hill properties that contained several substantial errors of omission or commission by not using correct methods and techniques and this resulted in inflated appraisal reports that were not credible or reliable.

6. Enforcement staff of the Board has alleged that Respondent's USPAP violations with respect to the Tallow property include:

- a) Respondent violated the record keeping provisions of the Ethics Rule because his work file did not include documentation necessary to support his opinions, analyses and conclusions;
- b) USPAP Standards 1-2(e)(i) & 2-2(b)(ix) – Respondent failed to describe the improvement(s) accurately;
- c) USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of site value;
- d) USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements for the Tallow property because he inflated the cost per square foot to a figure higher than the figure derived from industry recognized cost manuals and other information sources;
- e) USPAP Standards 1-1(a) & 1-4(b) – Respondent failed to employ recognized methods and techniques in his cost approach analysis correctly;
- f) USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent did not collect, verify, analyze and reconcile comparable sales data adequately. He used inappropriate comparable sales (especially with regard to quality of construction) even though more appropriate, more similar sales were readily available in the area and should have been used, and did not report and adjust for seller concessions and closing costs contributions;
- g) USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze and report the Tallow property's listing history and reconcile that recent history with his own market value determination;
- h) USPAP Standards 1-5(b) & 2-2(b)(ix) – Respondent failed to analyze and report a prior sale of the Tallow property and reconcile that recent sale with his own market value determination;
- i) USPAP Standards 1-1(a) & 1-4(a) – Respondent has failed to employ

recognized methods and techniques correctly in his sales comparison approach for the reasons detailed above; and,

- j) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – Respondent produced a misleading appraisal report for the Tallow property that contained several substantial errors of omission or commission by not using correct methods and techniques and this resulted in an inflated appraisal report that was not credible or reliable.
- 7) Enforcement staff of the Board has alleged Respondent's USPAP violations with respect to the De Lozier property include:
- a) Respondent violated the record keeping provisions of the Ethics Rule because his work file did not include documentation necessary to support his opinions, analyses and conclusions;
  - b) USPAP Standards 1-2(f) & 2-2(b)(vii) – Respondent failed to discuss his scope of work for the De Lozier property appraisal;
  - c) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvement(s) description adequately because he reported inconsistent square footage calculations throughout his report that were at odds with readily available data sources;
  - d) USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of the De Lozier property's site value;
  - e) USPAP Standards 1-4(b)(iii) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile accrued depreciations by not addressing significant economic obsolescence issues;
  - f) USPAP Standards 1-1(a) & 1-4(b) – Respondent failed to employ recognized methods and techniques in his cost approach analysis correctly;
  - g) USPAP Standards 1-4(a) & 2-2(b)(ix) and 1-1(a) & 1-4(a) -- Respondent failed to collect, verify, analyze and reconcile comparable sales data properly and failed to employ recognized methods and techniques correctly. Even though appropriate comparable properties were readily available in the area and should have been used, Respondent used inappropriate and dissimilar properties as comparable sales which were superior in quality and condition. In addition to failing to utilize the most similar sales, Respondent made inappropriate or no adjustments at all for the comparables he did use. Respondent also failed to report, analyze and adjust for seller concessions / contributions. All of this resulted in an inflated opinion of market value;

- h) USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze and report the De Lozier property's listing history and reconcile that recent history with his own market value determination;
  - i) USPAP Standards 1-6(a) & 1-6(b) and 2-2(b)(ix) – Respondent failed to reconcile his final opinion of value indicated by his sales comparison approach adequately given the adjusted sales prices of the comparable he used when compared to his final opinion of value; and,
  - j) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – Respondent produced a misleading appraisal report for the De Lozier property that contained several substantial errors of omission or commission by not using correct methods and techniques and this resulted in an inflated appraisal report that was not credible or reliable.
- 8) Enforcement staff of the Board has alleged Respondent's USPAP violations with respect to the Malac property include:
- a) Respondent violated the record keeping provisions of the Ethics Rule because his work file did not include documentation necessary to support his opinions, analyses and conclusions;
  - b) USPAP Standards 1-2(f) & 2-2(b)(vii) – Respondent failed to discuss his scope of work for the Malac property appraisal;
  - c) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and reports the improvement(s) description adequately because he failed to provide any living area calculations in his report or in his work file;
  - d) USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of site value for the Malac property;
  - e) USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements for the Malac property because he inflated the cost per square foot to a figure higher than the figure derived from industry recognized cost manuals and other information sources;
  - f) USPAP Standards 1-1(a) & 1-4(b) – Respondent failed to employ recognized methods and techniques in his cost approach analysis correctly;
  - g) USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent did not collect, verify, analyze and reconcile comparable sales data adequately. He used inappropriate, unverified comparable sales even though more appropriate, more similar sales were readily available in the area and should have been

used, he failed to support his adjustments for lot size, design / appeal and quality of construction and did not report and adjust for seller concessions and closing costs contributions. Respondent also used incorrect square footage for the comparables he did use;

- h) USPAP Standards 1-1(a) & 1-4(a) – Respondent has failed to employ recognized methods and techniques correctly in his sales comparison approach for the reasons detailed above;
  - i) USPAP Standards 1-5(a) & 2-2(b)(ix) – Respondent failed to analyze and report the agreement of sale for the Malac property, nor was it contained in his work file; and,
  - j) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – Respondent produced misleading appraisal reports for the Malac property that contained several substantial errors of omission or commission by not using correct methods and techniques and this resulted in inflated appraisal reports that were not credible or reliable.
- 9). Respondent has denied all of the allegations by Enforcement staff in each of the above referenced allegations. Respondent has agreed to waive a hearing and agreed to the entry of this Consent Order solely for the purposes of resolving this matter, and not to be used for any other purpose.

### **CONCLUSIONS OF LAW**

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. The Board believes there is evidence to show that Respondent violated one or more of the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions) USPAP Standards Rules: 1-2(f) & 2-2(b)(vii); 1-2(e)(i) & 2-2(b)(iii); 1-4(b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(ix); 1-5(b) & 2-2(b)(ix); 1-6(a) & 1-6(b) & 2-2(b)(ix); 1-1(a); 1-1(b); 1-1(c); 2-1(a).
3. The Board believes there is evidence to show that Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9).

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Have his license revoked for eighteen (18) months with this revocation being fully probated under the following conditions:

- i. During the entire eighteen (18) month revocation Respondent shall submit on a form prescribed by the Board, an appraisal experience log to the Board every three months. The log shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within twenty days of notice of any such request;
  - ii. Respondent shall timely comply with all the terms and conditions of this order.
- b. Shall sit for and receive a passing grade on the same examination taken by those applying for their state license;
  - i. Respondent shall submit examination results reflecting he has passed the examination no later than October 31, 2009; and,
  - ii. Proof of successful passage of the examination within this timeframe is a condition of the probated revocation of his certification. If established at a hearing, Respondent's failure to pass the examination within the above-noted timeframe shall result in the revocation of his license;
- c. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- d. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- e. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach;
- f. Attend and complete a minimum, 15 class-room hour course in Residential Highest and Best Use;
- g. Pay to the Board an administrative penalty of \$1,500.00;
- h. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

**ALL CLASSES** required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all

classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for licensure.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY DAYS** of the date of this Agreed Final Order.


Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518, including but not limited to revocation of the above-noted probation.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 08 day of OCTOBER, 2008.

  
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JOSEPH SMITH F/K/A EMMANUEL E.  
ARAKPOGUN

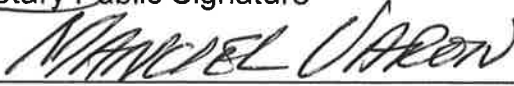
  
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JAY THOMPSON, ATTORNEY FOR  
JOSEPH SMITH F/K/A EMMANUEL E.  
ARAKPOGUN



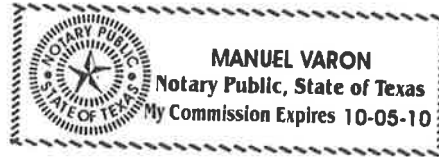
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 08 day of October, 2008, by JOSEPH SMITH F/K/A EMMANUEL E. ARAKPOGUN, to certify which, witness my hand and official seal.



Notary Public Signature

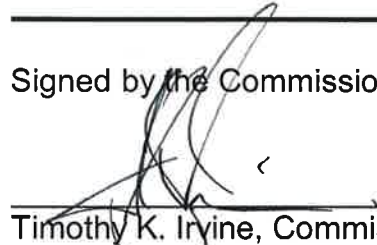


Notary Public's Printed Name




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Signed by the Commissioner this 17<sup>th</sup> day of October, 2008.

  
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Timothy K. Irvine, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17<sup>th</sup> day of October, 2008.

  
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Clinton P. Sayers, Chairperson  
Texas Appraiser Licensing and Certification Board